IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3389 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T CORPN

Versus

BHUPENDRA H LIMBASIA C/O KC SHAH

Appearance:

MR HARDIK C RAWAL for Petitioner

MR PS PATEL for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 10/08/2000

ORAL JUDGEMENT

1. Heard learned counsel Mr. H.C. Rawal for the petitioner, and learned counsel Mr. P.S. Patel for the respondent. Rule. Mr. P.S. Patel, learned counsel

appearing on behalf of the respondent waives service of rule.

2. The petitioner Gujarat State Road Transport Corporation has filed the present petition for quashing the judgment & award passed by the Labour Court, Kalol on 23-9-1999 in Reference (LCK) No. 544 of 1996. The respondent Bhupendra H. Limbasia was appointed as Conductor under the petitioner Corporation. A surprise check was conducted by the Corporation on 16-4-1994 in the route where the respondent was on duty. During the surprise checking it was found that the respondent has committed financial irregularity and on the basis of the report, disciplinary proceeding was started. In the disciplinary proceeding, the charges framed against the respondent was proved. The petitioner Corporation after hearing the respondent and after considering the Inquiry Report, dismissed the respondent from service by an order dated 22-7-1994. The departmental appeal filed by the respondent was also dismissed by an order dated 29-11-1994, and the Second Appeal preferred by the respondent was also dismissed by the appellate authority on 26-3-1996. Having felt aggrieved by the order of dismissal, the respondent moved the Labour Court and the dispute has been registered as Reference (LCK) No. 544 of 1996 before the Labour Court at Kalol. The Labour Court after taking evidence and after hearing the parties, quashed the dismissal order and directed the Corporation to reinstate the respondent in service. The Labour Court however did not grant any backwages to the respondent.

3. Mr. Rawal, learned counsel for the petitioner submitted that the Labour Court should not have interfered with the findings of the Inquiring authority. It is submitted that the Labour Court did not consider the past conduct of the respondent. It is further submitted that the respondent was earlier dismissed on 5-6-1996 and in the departmental appeal he was reinstated. It is also submitted that the petitioner was also dismissed from service for misconduct on 14-8-1984, but as per order of the Labour Court he was reinstated on 6-6-1991. Learned counsel accordingly submitted that earlier the respondent was dismissed from service for various misconducts and he was cautioned and warned several times by the Corporation for his misconduct. Learned counsel accordingly submitted that, having regard to the past conduct of the respondent the Labour Court should not have shown any leniency towards the respondent by passing an order of reinstatement of the respondent. Learned counsel for the petitioner accordingly submitted

that, the Labour Court has committed an error and acted without jurisdiction in interfering with the order of dismissal and therefore, the judgment & award of the Labour Court should be quashed.

4. Learned counsel for the respondent submitted that the petitioner did not prove earlier misconducts of the respondent before the Labour Court and the Labour Court has correctly decided for reinstatement of the respondent in service. Learned counsel however submitted that the Labour Court did not grant any back wages, which should have been awarded to the respondent.

5. I have considered the submission of the learned counsel of both the parties. It is an admitted fact that the papers relating to the conduct of the respondent was placed before the Labour Court. It appears that the Labour Court even though did not interfere with the legality or otherwise of the departmental proceeding has taken a lenient view in the matter of punishment. Having regard to the past conduct of the petitioner, I am of the view that the Labour Court has taken a too lenient view in the matter of punishment. When no illegality is found in the departmental proceeding, I am of the view, in addition of withholding of backwages, a penalty of withholding of 2 increments with cumulative effect will meet the ends of justice. Accordingly the order of the Labour Court, Kalol, passed in Reference (LCK) 544 of 1996 is modified to the extent that two annual increments of the respondent will be withheld with cumulative effect and will not get any backwages. However, I am not interfering with the order of reinstatement passed by the Labour Court. The absence period of the petitioner between the date of termination and reinstatement will be counted as in service for the purpose of pension and pensionary benefits only. The petition is accordingly allowed in part. Rule made absolute to the aforesaid extent only. I make no order as to costs.

Dt: 10-08-2000 (P.K. Sarkar, J)

/vgn.